



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Leo's Used Cars

Case No.: TR-01-0025

FINAL DECISION

On January 23, 2001, Sally Lyons filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Leo's Used Cars. The claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on October 18, 2001. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d) the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Sally Lyons
240 Maureen Street
P. O. Box 582
Dickeyville, WI 53808

Mr. Leo Friederick
115 3rd
Dickeyville, WI 53808

Capitol Indemnity Corporation
P. O. Box 5900
Madison, WI 53705-5900

FINDINGS OF FACT

1. Leo Friederick, d/b/a Leo's Used Cars (Dealer) was a motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to Wis. Stat. § 218.0111. The Dealer's facilities were located at 314 South Main Street, Dickeyville, Wisconsin. The dealership has been sold to a new owner subsequent to the filing of the instant bond claim.

2. The Dealer had a surety bond in force since June 3, 1997. (Bond No. LP723243 from Capitol Indemnity Corporation).

3. On May 26, 2000, Sally Lyons purchased a 1999 Pontiac Grand Am, vehicle identification number 1G2NW52E4XM917296, from the Dealer. Ms. Lyons paid \$6,540 including tax and registration fees for the vehicle. The vehicle was sold to Ms. Lyons with an Illinois salvage title. The purchase contract contained the following language:

WARNING!

This is a salvage vehicle and cannot
be registered for use on Wisconsin highways
until it passed an authorized inspection
which requires payment of a fee. Title will
be issued with a rebuilt salvage brand.

4. At the time Ms. Lyons purchased the vehicle, the only readily observable damage was on the passenger side of the vehicle. In the complaint she filed against the Dealer, Ms. Lyons states that in response to her question concerning what was wrong with the vehicle, the salesperson told her that the vehicle “would need a door skin, two windows, some paint work, a tire and rim” she was also told that “it would be a good idea for someone to check over the suspension.”

5. After Ms. Lyons purchased the vehicle, the Dealer delivered it to a body shop for repairs. The body shop mechanic discovered that the fusebox was corroded and there was mud on the undercarriage. There was also a permanent water line on the inside of the passenger side tail light, the vehicle smelled musty, and the lights did not work. These problems all indicated that the vehicle had been under water. Ms. Lyons had the vehicle repaired; however, shortly after these problems were repaired, the ABS and brake indicator lights came on and stayed on. The indicator lights problem was traced to corrosion on the vehicle’s computer. The corrosion on the computer further indicated the vehicle had been underwater. Ms. Lyons contacted the salesperson at the dealership and asked him whether the vehicle had ever been underwater. The salesperson told her it had not.

6. On January 23, 2001, Ms. Lyons filed a claim against the surety bond of the Dealer. The amount of the action is \$11,374.00 and is itemized as \$6,540.00 representing the original purchase price of the vehicle, \$84.00 for a “license plate application,” and \$4,750.00 for repairs to the vehicle.

7. The bond claim was filed within three years of the ending date of the period the Capitol Indemnity Corporation bond was in effect and is, therefore, a timely claim.

8. The loss sustained by Sally Lyons was not caused by an act of the Dealer that would be grounds for the suspension or revocation of its motor vehicle dealer license. Accordingly, the claim is not allowable.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin. Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.01(3)(a) 1. to 14., 18. to 21., 25. or 27. to 31., Stats. [*recodified as §§ 218.0116(1)(a) to (gm), (im) to (k), (m), and (n) to (p) in Wis. Stats. (1999-2000)*].

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(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed.

Wis. Admin. Code § Trans 139.04(6)(a)1 requires dealers to disclose the material history of a vehicle including whether the vehicle has been flood or water damaged. The Dealer failed to do so; however, Wis. Admin. Code § Trans 139.04(6)(c), expressly exempts certain vehicles from the disclosure requirements. Included among the exempt vehicles are “unrepaired salvage vehicle[s] with a written statement ‘This is a salvage vehicle’, conspicuously displayed.” The Dealer did not violate the disclosure requirements of Wis. Admin. Code § Trans 139.04(6)(a).

Outside of the written disclosure requirements of Wis. Admin. Code § Trans 139.04(6)(a), Dealers are generally required to make truthful representations regarding the conditions of vehicles they offer for sale. According to Ms. Lyons, the salesperson made several denials that the vehicle had ever been underwater. However, there is no evidence in the record that the Dealer knew or should have known that the vehicle was water damaged. The most likely way the Dealer would have been informed of the water damage would have been a brand on the

title. The Illinois title was only branded as salvage, not flood or water damaged. There is no basis to find that the Dealer knowingly made a false statement regarding the condition of the vehicle purchased by Ms. Lyons.

Wis. Admin. Code § Trans 139.04(5)(c)2, provides the disclosure requirements for a salvage vehicle sold with a salvage title. Wis. Admin. Code § Trans 139.04(5)(c)2 requires that a Dealer “make the following disclosure conspicuously on the face of the motor vehicle purchase contract prior to its execution”:

“WARNING! This is a salvage vehicle and cannot be registered for use on Wisconsin highways until it passes an authorized inspection which requires payment of a fee. Title will be issued with a rebuilt salvage brand.”

The Dealer did comply with this requirement.

CONCLUSIONS OF LAW

1. Sally Lyons’ claim arose on May 26, 2000, the date she purchased the subject automobile from Leo Friederick, d/b/a Leo’s Used Cars. The surety bond issued to Leo Friederick, d/b/a Leo’s Used Cars, by Capitol Indemnity Corporation was in effect at this time. The claim arose during the period covered by the suety bond.

2. Sally Lyons filed a claim against the motor vehicle dealer bond of Leo Friederick, d/b/a Leo’s Used Cars, on January 23, 2001. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. The loss sustained by Sally Lyons was not caused by an act of Leo Friederick, d/b/a Leo’s Used Cars, which would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is not allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Sally Lyons against the motor vehicle dealer bond of Leo Frederick, d/b/a Leo's Used Cars, is DENIED.

Dated at Madison, Wisconsin on December 12, 2001.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Mark J. Kaiser
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.

